

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

**UNITED STATES OF AMERICA**

**v.**

**CASE NUMBER: 8:03-CR-77-T-30TBM**

**HATEM NAJI FARIZ**

**/**

**DEFENDANT HATEM NAJI FARIZ'S RESPONSE IN OPPOSITION TO THE  
GOVERNMENT'S MOTION TO QUASH DEFENDANT FARIZ'S NOTICE OF  
DEPOSITION *WITH PREJUDICE*, OR, IN THE ALTERNATIVE, TO COMPEL  
COMPLIANCE WITH THE COURT'S ORDER**

Defendant, HATEM NAJI FARIZ, by and through undersigned counsel, hereby respectfully submits his response in opposition to the government's Motion to Quash Defendant Fariz's Notice of Deposition With Prejudice, Or, In the Alternative, To Compel Compliance With Court Order. (Doc. 1230.) As grounds in support, Mr. Fariz states:

On February 9, 2005, during oral argument, the Court granted Mr. Fariz's Motion to Preserve Testimony by Way of Foreign Depositions and for Payment of Expenses with respect to 7 out of 8 proposed witnesses. On February 14, 2005, the Court memorialized its decision made from the bench in a written order. (Doc. 899.)

On April 20, 2005, Mr. Fariz filed his notice of taking the deposition of Naim Nasser Bulbol for May 2, 2005, via the remote videoconferencing facilities at the Sam M. Gibbons United States Courthouse. (Doc. 971.) On April 26, 2005, the government filed a motion to quash the taking of Mr. Bulbol's deposition. The Court heard oral argument

on the government's motion on April 28, 2005. At the hearing, the government argued that the deposition should be quashed because counsel for Mr. Fariz (1) had not obtained permission for the deposition from the Palestinian Authority (Doc. 989 at 14); (2) had not addressed the form of the oath (Doc. 989 at 15); (3) had not identified the elements of and sanctions for perjury under the Palestinian Authority (*id.*); and (4) had not responded to the government's request for documents (Doc. 989 at 15-16).

The Court granted the government's motion to quash the deposition without prejudice, and instructed counsel for Mr. Fariz that they may reschedule the notice of deposition once they (1) produce documents that they intend on using during Mr. Bulbol's deposition; (2) produce documents responsive to the government's request; (3) identify the form of oath used in the Gaza Strip; and (4) research whether the deponent would be subject to prosecution in the Gaza Strip if he does not tell the truth while being deposed. (Doc. 989 at 19-20.) Regarding the issue of the permission of the Palestinian Authority to take Mr. Bulbol's deposition, the Court recommended that counsel for the government and Mr. Fariz collaborate toward that end. (Doc. 989 at 19.) Counsel for the government requested an official correspondence from the Court or Mr. Fariz in order to memorialize the request in a form that could be sent to Washington. (Doc. 989 at 20.) The Court directed that counsel for Mr. Fariz write a letter to the government expressly requesting its help in arranging for the taking of Mr. Bulbol's deposition with the appropriate permission of the Palestinian Authority and/or arranging the travel of Mr. Bulbol into the United States for the purposes of testifying in this case. (Doc. 989 at 21-

22.)

On May 6, 2005, counsel for Mr. Fariz sent the government a letter requesting the assistance of the relevant United States authorities in arranging a deposition within the territories controlled by the Palestinian Authority.<sup>1</sup> (Attached as Exhibit A.)

On May 10, 2005, the Court issued a written order granting without prejudice the government's Motion to Quash Notices of Deposition, but allowed Mr. Fariz "to reschedule the deposition after satisfying the conditions established by the Court." (Doc. 1033.)

On May 11, 2005, the government informed counsel for Mr. Fariz by letter that it would be willing to arrange to parole Mr. Bulbol into the United States for the purpose of testifying in this matter. Additionally, the letter made reference to a document that it claimed counsel for Mr. Fariz cited at the hearing of April 28, 2005, namely, an "affidavit from a Palestinian lawyer that described the applicable laws in the Gaza and how oaths were administered under that law," and requested a copy of that affidavit.<sup>2</sup>

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<sup>1</sup>Interestingly, counsel for the government criticizes this letter in its motion. (Doc. 1230 at 4). The government states that the government did not include any Palestinian legal authority or requested documents. (*Id.*) Per the government's statement, counsel for Mr. Fariz did not believe that additional documents were to be included in the letter, but rather understood that the sole purpose of the letter was for the government to have official correspondence to send to Washington. Counsel for the government's exact statement was, "Your Honor, if I could request some sort of official order or correspondence from the Court or even an official correspondence from the defense, something official that I can send up to Washington." (Doc. 989 at 20:21-24).

<sup>2</sup>In fact, counsel for Mr. Fariz stated at the hearing that they had an affidavit from an expert opining that Palestinians in the Gaza Strip and the West Bank by and large cannot travel out of those areas. Counsel for Mr. Fariz never stated that they had an affidavit that addressed the areas described in the government's May 11, 2005 letter.

On June 7, 2005, counsel for Mr. Fariz informed the government by letter that at the present time Mr. Bulbol is unwilling to come to the United States - thereby remaining unavailable for the purposes of Rule 15 - and requested that it continue in its efforts to arrange the taking of his deposition via remote videoconferencing via the relevant United States authorities. (Attached as Exhibit B.) In response to the government's request for a copy of the non-existent affidavit, counsel for Mr. Fariz informed the government of its mistake. However, the undersigned inquired whether he might additionally facilitate the process of arranging Mr. Bulbol's deposition by obtaining a copy of any relevant legal authority - per the Court's instruction - or if the government intended to rely solely on its own independent inquiries to satisfy its concerns in this regard. On June 24, 2005, the government responded with the instant motion. (Doc. 1230.)

### **ARGUMENT**

The government's motion is premature, since the Court denied without prejudice Mr. Fariz's first notice of deposition on May 10, 2005, and Mr. Fariz has not yet re-filed his notice of taking Mr. Bulbol's deposition. The government's motion should therefore be denied since there is no outstanding issue before the Court. Counsel for Mr. Fariz are aware of their obligations to satisfy the conditions laid out by the Court on April 28, 2005, and do not plan on setting notice of Mr. Bulbol's deposition until such time as they are in compliance with the Court's requirements. The process of identifying and obtaining documents responsive to the government's request, as well as independently working toward identifying the form of the oath used in the Gaza Strip and any attendant

legal sanctions for perjury, is time-intensive. Counsel for Mr. Fariz has been working diligently toward satisfying these conditions and expect to be in a position to comply with the Court's requirements soon.

Despite the government's allegations to the contrary, rather than deciding to refuse to assist the government, counsel for Mr. Fariz have merely reported Mr. Bulbol's decision regarding travel to the United States to the government, and then offered their help to the government in attempting to address its concerns. (See Exhibit B.)

Essentially, given the nature of the government's offer of parole, counsel for Mr. Fariz are not in a position to assuage Mr. Bulbol's concerns regarding travel to the United States for the purpose of testifying in this matter. Further, the tone of the government's motion seems intended to obscure the fact that the State Department "cannot guarantee that it will be able to provide the necessary information and assurances to facilitate a deposition during the pendency of this trial." (Doc. 1230 at 8.) Regardless, Mr. Fariz remains intent on pursuing the necessary steps toward taking Mr. Bulbol's deposition in compliance with this Court's directives.

WHEREFORE, Defendant Hatem Naji Fariz respectfully requests that the Court deny the government's Motion to Quash Defendant Fariz's Notice of Deposition With Prejudice, Or, In the Alternative, To Compel Compliance With Court Order in its entirety.

Respectfully submitted,

R. FLETCHER PEACOCK  
FEDERAL PUBLIC DEFENDER

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 11th day of July, 2005, a true and correct copy of the foregoing has been furnished by CM/ECF, to Walter Furr, Assistant United States Attorney; Terry Zitek, Assistant United States Attorney; Cherie L. Krigsman, Trial Attorney, U.S. Department of Justice; Alexis Collins, Trial Attorney, U.S. Department of Justice; William Moffitt and Linda Moreno, counsel for Sami Amin Al-Arian; Bruce Howie, counsel for Ghassan Ballut; and to Stephen N. Bernstein, counsel for Sameeh Hammoudeh.

/s/ Wadie E. Said  
Wadie E. Said  
Assistant Federal Public Defender